

***Draft* MEETING MINUTES  
CITY OF MILPITAS**

<b>Minutes of:</b>	<b>Regular Meeting of Milpitas City Council</b>
<b>Date:</b>	<b>Tuesday, June 2, 2015</b>
<b>Time:</b>	<b>6:00 PM Closed Session / 7:00 PM Open</b>
<b>Location:</b>	<b>Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas</b>

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**CALL TO ORDER**

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Montano, Councilmembers Barbadillo, Giordano and Grilli

**ABSENT:** None

Only one item would be for discussion regarding anticipated litigation (the first item on the agenda would not be discussed).

Mayor Esteves asked if the City Attorney Subcommittee would make a comprehensive review of total in-house legal costs, and have a specific recommendation to City Council at the next meeting, not solely an information item, including all costs of contracted outside legal costs.

**STUDY SESSION**

No study session on Serra Center was held at the request of the developer.

**CLOSED SESSION**

City Council convened in Closed Session to discuss litigation matters.

City Council then convened in Open Session at 7:00 PM.

**ANNOUNCEMENT**

None out of Closed Session. Mayor Esteves noted the Study Session on the agenda was not held.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**INVOCATION**

Mayor Esteves gave a prayer to start the meeting.

**MEETING MINUTES**

Motion: to approve minutes of May 19, 2015 City Council meeting, as amended

City Clerk noted two minor edits on page 6 of the draft meeting minutes: to add the number "5" to the Aye votes on the budget and include the figure \$86,130,096 next to the appropriations limit.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of:	AYES: 5
	NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendar/Schedule of Meetings for June 2015

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of:	AYES: 5
	NOES: 0

**PUBLIC FORUM**

Rob Means, 1421 Yellowstone resident, displayed a website video regarding Personal Rapid Transit, a means of transit he wanted to promote.

Robert Marini, Milpitas resident, showed a chart displaying City of Milpitas with 3.42 persons per household from the state Department of Finance. He then displayed rates charged in Milpitas for sewer service and amounts for some commercial customers.

Ray Maglalang, Milpitas resident, invited all to view the lavender blue jacaranda trees in bloom around the City. He discussed various types of trees planted all around Milpitas over many years that have survived. He mentioned jacaranda trees specifically at the Yosemite crossover of I-680. He hoped to have jacaranda as the official City tree in Milpitas.

Garry Long, Silvera St. resident, spoke on proposed increased sewer rates. He cared about the difference between rates for single family homes and multi-family units, and how the city made its calculations.

Councilmember Giordano would like to have a response if the model for rate calculation was 40 years old, in advance of the adoption of the sewer rate ordinance. A memo from staff would help her and Council be knowledgeable. Councilmember Grilli responded that the City Council could have it as an agenda item topic at the next meeting.

Tom Valore, 670 Cardiff Place resident, mentioned a meeting on the Request for Proposals for the disposal and garbage contract. He was concerned about precluding the most cost-effective approach, to allow for combining both disposal and hauling into one proposal for savings. Various criteria for selection should be stipulated, he urged.

Voltaire Montemayor, Penitencia St. Milpitas resident, still saw signs to report odors. All cities should cooperate on this issue and find a solution.

Isaac Hughes, Milpitas resident, discussed an incident in which a dog bit him recently, belonging to Councilmember Grilli. He noted his injuries, a police report, and facts of the incident.

## **ANNOUNCEMENTS**

Councilmember Grilli congratulated the Jain Center in Milpitas, with its new solar panel system unveiled last weekend, and congratulated the Milpitas Chamber of Commerce on its successful second annual International BBQ. Mayor Esteves complimented both of those organizations, also.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. Three Councilmembers responded that they had received a campaign contribution related to agenda item no. 3 (TEFRA Bonds for the Crossings at Montague development project): Mayor Esteves, Councilmembers Barbadillo and Grilli. Councilmember Barbadillo also said he had a conflict of interest on this item.

## **APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted with one change in order of items discussed

City Manager Tom Williams asked to move agenda item no. 8 (SCVWD report) to be heard first, prior to the public hearings.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

## **CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Vice Mayor Montano requested to remove item no. 20 (Agreement with Jensen Landscape Services) from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

* 6. Odor Report	Received a current update of the odor control report.
* 9. Fee Waiver Request	Waived \$680 fee for rental cost for outdoor Dixon Landing Park by Hindu Swayamsevak Sangh USA for its International Yoga Day event on June 21, 2015.
*10. New CIP No. 4278	1. Approved new CIP Project, Disadvantaged Community Americans with Disabilities Act (ADA) Curb Ramps, Project No. 4278. 2. Approved a budget appropriation of \$39,352 from the Gas Tax Fund and \$60,648 from FY 2015-16 CDBG Funds to the Disadvantaged Community ADA Curb Ramps.
*13. Ordinance No. 197.13	Waived the second reading and adopted Ordinance No. 197.13 amending the Milpitas Municipal Code to re-organize the City departments.
*14. Ordinance No. 289	Waived the second reading and adopted Ordinance No. 289 amending the Milpitas Municipal Code to include the contract and settlement authority of City staff.
*15. Resolution	Adopted Resolution No. 8484 authorizing purchase of the ADAC S4 system by SyTech Corp. at a cost of \$26,739.38 pursuant Municipal Code section on sole source procurement; and, approving maintenance and support agreement with SyTech Corp. in the annual amount of \$10,308.00 and for a term from July 1, 2016 to June 30, 2020, subject to City Council appropriation of funds and without further Council action.
*16. Resolution	Adopted Resolution No. 8485 approving purchase of a breathing air compressor system from Bauer Compressors for the Fire Department for \$64,351.76, via procedures for “piggyback” procurement.
*17. Resolution	Adopted Resolution No. 8486 supporting reimbursement to the Milpitas Fire Department of mutual aid costs through the Cal EMA funding process.
*18. Agreement with Data Compliance Services	Approved an agreement with Compliance Data Services for Transient Occupancy Tax (TOT) audit services in the total amount of \$20,500 for a term from July 1, 2015 to June 30, 2016.
*19. Amendment No. 4 with DataProse LLC	Approved Amendment No. 4 extending the agreement with DataProse, LLC to June 30, 2016 for an amount not to exceed \$62,500 for utility bill printing and mailing services.
*21. Agreement with Assurance Engineering Inc.	Approved an agreement with Quality Assurance Engineering, Inc. doing business as Consolidated Engineering Laboratories, in the amount of \$1,000,000, and for a term from July 1, 2015, to June 30, 2020, for construction inspection and materials testing services for various Capital Improvement Program projects.
*22. Amendment No. 1 to Agreement with HMM Inc.	Approved Amendment No. 1 to agreement with HMM Inc. for Project No. 4179, increasing the agreement amount by \$36,000 and extending the term to June 30, 2016.
*23. Agreement with ID Modeling	Approved an agreement with ID Modeling in an amount not to exceed \$49,980.00 for a term from June 2, 2015 to July 31, 2016. Approved a budget appropriation of \$49,980 from the water fund to CIP No. 7118.
*24. Amendment No. 7 to Master Agreement with VTA	1. Approved Amendment No. 7 to the Master Agreement with the Santa Clara Valley Transportation Authority (VTA) relating to the Silicon Valley Rapid Transit Berryessa (BART) Extension Project (GT-1063) and Montague Widening Project (CIP No. 4179). 2. Authorized the payment of \$2,825,000 to Santa Clara VTA for City Infrastructure Upgrades after July 1, 2015.
*25. Approve Payments	Authorized payments of annual support and maintenance to two vendors: Cayenta for \$151,349.62 and Peelle Technologies for \$23,144.00.

## PUBLIC HEARINGS

**1. Levy Assessments for  
LLMD No. 95-1 McCarthy  
Ranch**

City Engineer Steven Machida introduced the Landscaping and Lighting Maintenance Assessment District No. 95-1 at McCarthy Ranch. Each year, a public hearing was required to review assessments charged to property owners for public improvements. He displayed photos showing results of the maintenance, installation and repair work in the district. \$290,738 was the total amount to be assessed in the next fiscal year.

Vice Mayor Montano asked for clarification on the contract for services by Jensen Landscaping (agenda item no. 20) and the action required at the public hearing. City Manager Williams explained the annual assessment process at this hearing, while the later matter was the contract with the service provider.

Next, Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, asked about parcel numbers on McCarthy Blvd. in that district and who paid the assessments. Mr. Machida explained it was the landowners within the district who paid for the services performed.

Voltaire Montemayor, Milpitas resident, remarked about the levy.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

(2) Motion: to adopt Resolution No. 8481 approving the annual Engineer's Report, confirm diagram and assessment, and order levy of assessments for FY 2015-16 for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

**3. Levy Assessments for  
LLMD No. 98-1 Sinclair  
Horizon**

City Engineer Steven Machida introduced the Landscaping and Lighting Maintenance Assessment District No. 98-1 at Sinclair Horizon subdivision. Each year, a public hearing was required to review assessments charged to property owners for public improvements. He displayed photos showing some of the landscape and maintenance in that neighborhood. \$38,053 was the total amount to be assessed in the next fiscal year.

Mayor Esteves opened the public hearing, and no speakers came forward.

(1) Motion: to close the public hearing after hearing no comments

Motion/Second: Vice Mayor Montano/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

(2) Motion: to adopt Resolution No. 8482 approving the annual Engineer's Report, confirm diagram and assessment, and order levy of assessments for FY 2015-16 for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon

Motion/Second: Vice Mayor Montano/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**3. Bonds for The Crossings at Montague – TEFRA hearing**

Councilmember Barbadillo said he would excuse himself from this matter, due to the location of his business office in proximity to the project on Montague. He left the dais for this item.

Assistant City Manager/Finance Director Emma Karlen explained the need for actions on this bond refinancing matter for The Crossings at Montague project. Bonds were to be issued for Montague Parkway Associates LP by the California Municipal Finance Authority (CMFA), following this public hearing as required by the Tax and Equity Fiscal Responsibility Act (TEFRA)

Vice Mayor Montano remarked about affordable housing in this financing action and the general need for affordable housing due to expensive rents in the area. Her comment followed the explanation that the project would consist of 20% affordable units for sale, and thus eligible for tax-exempt bond financing.

Mayor Esteves opened the public hearing.

Robert Marini, Milpitas resident, commented on the refinancing of the bonds. He asked if no interest was to be paid by the City, which Mrs. Karlen confirmed. He also sought clarity on the definition of affordable housing.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSTAIN: 1 (Barbadillo)

(2) Motion: to adopt Resolution No. 8483 approving the issuance of bonds by the California Municipal Finance Authority for the benefit of Montague Parkway LP to provide for financing of The Crossings at Montague project, and that such adoption is solely for the purposes of satisfying the requirements of TEFRA, the Internal Revenue Code and CA Government Code Section 6500 (and following)

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSTAIN: 1 (Barbadillo)

**UNFINISHED BUSINESS**

**4. Ethics Hotline**

Mayor Esteves reported that he became aware of the new “ethics hotline” at the Santa Clara Valley Transportation Authority, on whose Board of Directors he served.

City Manager Williams explained that this topic was brought to Council to seek agreement from Councilmembers to proceed, for any item that would take four hours or longer of staff time. There were at least three vendors that could take such phone calls as required for an ethics hotline, if established. Costs were estimated at \$15,000 - \$20,000. Reports to such hotline were for people to report any unethical business or labor practices that might occur with City vendors.

Councilmember Grilli supported the idea but had questions about the process, particularly how such calls would be handled. The City Manager mentioned that the hotline company would contact him or the City Attorney or Human Resources about any confidential personnel complaint.

Councilmember Giordano referred to a past Ethics Program that was a disaster in the early 2000s in Milpitas, which she did not want repeat. Once the Councilmember she heard of

the VTA's new hotline program, she was interested to learn more. She inquired if there was penalty process.

Mayor Esteves commented that it was really more for vendors that do business with the city. The ethics hotline was not designed for customer service issues or human resources problems.

Motion: to direct the City Manager to conduct research for an ethics hotline and return to City Council with specifics for a Request for Proposals for vendors who could implement an ethics hotline program in Milpitas

Motion/Second: Mayor Esteves/Councilmember Giordano

Vice Mayor Montano asked about whistleblower protections. City Attorney Mike Ogaz responded there were such statutes in state and federal laws to protect those reporting. He could respond in a future update to the Council.

Motion carried by a vote of: AYES: 5  
NOES: 0

## 5. Affordable Housing Policy Options

City Attorney Mike Ogaz discussed options on an affordable housing policy, in advance of the nexus study that City Council had already directed, which would not be completed for approximately nine months (in advance of any permanent policy). He reviewed five options noted in the written report. City Council was requested to provide direction to staff to implement or take no action at this time. Mr. Ogaz suggested the most feasible option at this time could be requiring a Condition of Approval for affordable housing, in advance of the nexus study.

Councilmember Giordano appreciated this topic on the agenda, as requested by the Mayor. She felt it was premature before the nexus study was done. Inclusionary zoning did not necessarily bring affordable housing units to be built in the City.

Vice Mayor Montano agreed with the Mayor's request. There was a crisis over housing going on right now. Inclusionary zoning was what she thought would work best. Including affordable in Conditions of Approval would be helpful.

Councilmember Grilli needed a lot more information before voting on including affordable housing prior to the nexus study. No affordable housing was required in the Transit Area Specific Plan. She wanted the City to have a strong policy that would stand up legally.

Councilmember Barbadillo commended the Planning Commission for recommending a nexus study on affordable housing. The nexus study was needed while there was a whole lot of pending development projects in Milpitas.

Mayor Esteves wanted to clarify that the potential new policy would only apply after this date to new projects that had no application with the City yet. He said maybe just 5% required in a new project, for instance.

Councilmember Grilli asked the Mayor: was this for new projects, and related to which option. The Mayor replied Option 2, with a condition of approval requiring 5% of a new development to be affordable units.

The City Manager talked about the status of a project as complete or deemed incomplete, and projects being amended. Mayor Esteves responded that the last one should not be included in a new affordable housing requirement.

Mayor Esteves asked for comments from the audience.

Robert Marini, Milpitas resident, said the devil was in the details. This was a noble intent by the City Council but there would still be homeless people after this action.

Julie Martinez, homeless resident of Milpitas with her children, asked what the City Council was doing for people here including the homeless. She gave her own personal homeless story and efforts to try to find affordable home or apartment.

Voltaire Montemayor, Milpitas resident, said this was a good one, regarding units for people and houses.

Motion: to request the City Attorney to return to the City Council with a policy for a Condition of Approval in future development projects including what was covered, to specify 5% of units shall be affordable and all of this would be in advance of the nexus study and prior to a formal, permanent policy on affordable housing requirements

Motion/Second: Mayor Esteves/Vice Mayor Montano

Motion carried by a vote of: AYES: 4  
NOES: 1 (Giordano)

## REPORT of MAYOR

### 7. Plastic Bags

City Engineer Steven Machida reported that at the last meeting of the Recycling and Source Reduction Advisory Commission in April, Commissioners discussed state legislation on banning plastic bags. Adopted state legislation was subject to a referendum vote on the upcoming statewide ballot. Commissioners asked for the ban to be considered again by Milpitas City Council, after the past effort failed. Staff needed to know if Council would like to proceed on action to ban plastic bags. Several Councilmembers expressed support while one did not.

Mayor Esteves invited comments from audience.

Robert Marini, Milpitas resident, could go either way on this issue. Businesses may need to charge the customers for the paper bags, and that's too much.

Voltaire Montemayor, Milpitas resident, spoke of non-biodegradable items such as the plastic item. It became trash.

Garry Long, Milpitas resident, asked how far reaching this ban would be.

Mr. Machida replied the ban would be for single use, plastic shopping bags, not the ones used for produce in groceries or the newspaper cover bags for rain protection.

Councilmember Barbadillo left the dais at 9:58 PM.

Motion: to direct staff to return to Council with appropriate actions following a review of the previous EIR completed with San Mateo County, and a possible ordinance to ban single use plastic shopping bags in Milpitas

Motion/Second: Mayor Esteves/Vice Mayor Montano

Motion carried by a vote of: AYES: 3  
NOES: 1 (Giordano)  
ABSENT: 1 (Barbadillo)

## NEW BUSINESS

### 8. Water Conservation Program Measure

City Engineer Steve Machida introduced SCVWD Director Richard Santos, who gave brief comments to the City Council on drought issues. He introduced Cary Hillis, District

staff lead on the current drought and the District's actions on the drought. Jerry Delapiedra also described actions of the district, including ways to report water waste around the county and noted its drought hotline number 408-630-2000.

Vice Mayor Montano inquired about the hotline phone and its operation, graywater installation, and outreach on low-flow showerheads to the older homes in communities. Mayor Esteves mentioned that the City had a water waste hotline too. The District's free Water Wise House Call Program was its signature effort during the drought.

Mayor Esteves invited the audience to come to the podium to ask questions.

Robert Marini, Milpitas resident, reported one incident of water waste. The City needed to get serious about expanding units of housing, which was adding to the drought. He asked what an efficient toilet was and for the cost of conversion of turf.

Voltaire Montemayor asked if the cost was too much versus desalination. Mr. Santos responded to him about sources of salt water runoff, before any effort to go to the ocean.

Rob Means, Milpitas resident, installed a "chilipepper" device, to use all the cold water in the hot water pipe. He also installed on-demand water circulation devices.

Garry Long, Milpitas resident, asked about any rebate for lawns, taking out the grass and putting in artificial turf. District staff helped him on these.

Ray Maglalang, Milpitas resident, mentioned desalination in San Diego and asked if the District was considering. Mr. Santos said that was explored, and there was a major cost issue at the moment.

Tom Valore, Milpitas resident, thought there were restrictions on recycled water. He asked if it was good enough to drink. Mr. Santos responded on the possibility of that.

Councilmember Barbadillo asked about the correlation of drought to less water usage and increased water rates for customers. Mr. Santos responded on significant increase in all of the costs to bring wholesale water to residents and businesses, so the District's customers such as City of Milpitas then needed to charge higher rates.

Councilmember Grilli thanked the Water District staff for the presentation. She urged additional outreach to Milpitas school sites and school staff.

Mayor Esteves thanked the gentlemen for their valuable presentation - especially for informing Milpitas homeowners about drought issues and ways to respond to it.

## **ORDINANCES**

### **11. Ordinance No. 65.144**

Chief Building Official Keyvan Irannejad explained that the proposed ordinance was in response to new state law requirements for updated regulations on permitting new rooftop solar system installation. The number of permits in Milpitas more than doubled in 2013 for solar permitting, with many more in 2014.

Mayor Esteves invited speakers from the audience.

Robert Marini, Milpitas resident, asked what was the rebate for installation of solar panels on a house and what were the kilowatt hours of the energy? Mr. Irannejad provided him with some of those estimated figures.

City Attorney Ogaz read aloud title of Ordinance No. 65.144, "An Ordinance of the City Council of the City of Milpitas adding Chapter 1.5 to Title II of the Milpitas Municipal Code Relating to Streamlines Permitting Process for Small Residential Rooftop Solar Systems."



(1) Motion: to waive the first reading beyond the title

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

(2) Motion: to introduce Ordinance No. 65.144

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

**12. Ordinance No. 208.51**

City Engineer Steven Machida explained the housekeeping item on the City's current sewer municipal code, as regards the regional wastewater treatment facility. The proposed ordinance would bring Milpitas into compliance, following recent action in San Jose.

City Attorney Ogaz read aloud the title of Ordinance No. 208.51, "An Ordinance of the City of Milpitas Amending Section 5.38 of Chapter 2, Article V, Title VIII of the Milpitas Municipal Code Relating to Wastewater Discharge Permits."

(1) Motion: to waive the first reading beyond the title

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

(2) Motion: to introduce Ordinance No. 208.51

Motion/Second: Councilmember Giordano/Vice Mayor Montano

Motion carried by a vote of: AYES: 5  
NOES: 0

**RESOLUTIONS**

Three resolutions were adopted on consent calendar.

**AGREEMENTS**

Six items were approved on the consent calendar.

**20. Amendment No. 9 to Agreement with Jensen Landscape Service, Inc.**

Vice Mayor Montano had requested this item be removed from consent. Her question was answered at the time of the LLMD public hearing. She knew now that parcel owners paid costs toward this company performing the landscaping in that identified district.

Motion: to approve Amendment No. 9 to extend the agreement with Jensen Landscape Services, Inc for 90 days from August 30, 2015 to November 30, 2015 and increase the agreement by \$18,219.75 for a total contract amount of \$425,900.75

Motion/Second: Vice Mayor Montano/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**ADJOURNMENT**

Mayor/Chair Esteves adjourned the City Council meeting at 10:16 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*